

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
IN RE NEW YORK CITY POLICING : Docket #20cv8924
DURING SUMMER 2020 DEMONSTRATIONS :
: New York, New York
: October 19, 2021
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

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<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: In re New York City Policing During Summer 2020 Demonstrations, case number 20cv8924. Counsel, please state their appearances for the record starting with plaintiff.

MR. ROBERT BALIN: This is Robert Balin of David Wright Tremaine for the newly consolidated Gray plaintiffs.

MS. JESSICA PERRY: Good afternoon, Your Honor, this is Jessica Perry with the New York Civil Liberties Union Foundation, appearing on behalf of the Payne plaintiffs.

MR. TRAVIS ENGLAND: Good afternoon, this is Travis England with the New York State Office of the Attorney General, appearing on behalf of plaintiff People of the State of New York.

MR. ROBERT RICKNER: Good afternoon, this is Robert Rickner, Rickner PPLC, for the Sierra plaintiffs.

MX. REMY GREEN: Good afternoon, this is Remy Green, Cohen & Green PLLC, for the Soh plaintiffs, and for the reporter I should appear as Mx. Green in the transcript, spelled M-X period, rather than Mr. or Miss.

MR. ANDREW STOLL: And good afternoon, this is Andrew Stoll, Stoll Glickman & Bellina for plaintiff Cameron Yates.

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THE COURT: And for defendants.

MS. DARA WEISS: Good afternoon, Your Honor, this is Dara Weiss from the New York City Law Department for the defendants.

THE COURT: Okay, we're here based on document 277 and document 283. I assume, Mr. Rickner, you're appearing for plaintiffs.

MR. RICKNER: Hello, Your Honor, Rob Rickner. I will be appearing for issues 2, 3, and 4. The People will be covering issue 1 as they're the most familiar with that particular set of facts and arguments.

THE COURT: Who's speaking for number 1?

MR. ENGLAND: This is Travis England, Your Honor.

THE COURT: Okay. Welcome, everyone. As you know, this conference is being recorded, but any other recording or dissemination or broadcast of the proceeding is prohibited. If you're not actually speaking, please keep your cellphone mute.

All right, so I guess we'll hear from you, Mr. - it's England, is that right?

MR. ENGLAND: Yes, Your Honor.

THE COURT: On the first issue.

MR. ENGLAND: Thank you, Your Honor. So the

reason we're here today, you know, defendants, as we explained in our submission, produced approximately 70,000 documents nearly the July 31 deadline, and that is the deadline that they had committed to producing documents by in response to plaintiffs' first consolidated set of requests. And, you know, shortly after defendants produced these documents, plaintiffs several weeks analyzing them and discovered that for the most part the documents that were produced were basically reproductions of documents that had been produced to both the Office of the Attorney General, my office, as well as the Department of Investigation, the City investigative department last year.

And this discovery led to certain concerns that we raised fairly immediately with the defendants. One, you know, as we previously explained on prior discovery conferences and in conferrals with the defendants, while the documents produced to the government last year are certainly responsive, they are by no means coextensive with discovery requests that plaintiffs have propounded in this litigation, both temporally and substantively. Temporally meaning we have identified a range of protests that go beyond those that were identified in the government investigations last year, and substantively

certain of the documents that are in our requests that we specifically enumerate in our requests were not encompassed in the documents either requested by or produced to the government agency last year.

And so we've flagged these issues for the defendants, and, you know, quite frankly, we've had a lot of difficulty in getting any information from defendants about the status of what their production, what their search process was for the documents that were not coextensive with the government agency productions. And any supplementation that they are doing in terms of identifying additional documents that were not produced by the government agencies but which are responsive to our requests.

And so as defendants' response to our submission admits, there, you know, they seem to acknowledge that there are certain categories of documents that were not produced by the July 31 deadline and that they are still in the process of gathering these documents. But plaintiffs have no information about what these categories are other than the document categories that we've identified in our September 10 letter to the defendants. And they've acknowledged that there are certain supplementation that is ongoing, but, again, we've had no

insight into what these documents are or when they will be produced, and that's part of the reason we're here today.

And plaintiffs, you know, really are requesting that both a date certain by which defendants will collect and produce these yet-to-be-produced documents as well as additional transparency into the process of their searches because we are simply not able to confer with them to get the appropriate information about what they've collected.

MS. WEISS: Your Honor, if I may. Plaintiffs - defendants and plaintiffs have had several discussions regarding how the defendants and their clients have collected this discovery that has been produced so far. And plaintiffs are well aware that the reason that the majority of the documents that have been produced are identical to the documents that have been sent to the DOI and the Attorney General's Office is because the documents that were requested by those agencies are identical to many of the documents that were requested by the plaintiffs in this case. So it makes sense that they would be identical.

Plaintiffs have also been made aware on several occasions by this office that they didn't simply reproduce those documents rather than conducting a separate search for those documents. But when it became clear that the

documents were the same, rather than conducting a search from scratch for those documents, our client was able to pull them from the documents that were already produced to those agencies. So that takes care of the documents that were already produced to the Attorney General and to the DOI.

A great number of documents that were not requested by the DOI or the AG's office were produced to plaintiffs' counsel. When plaintiffs' counsel pointed out that it looked like some documents were missing, this office immediately conferred with our client and began searching for those documents and have been in pretty constant contact with plaintiffs' counsel through a series of meet and confers about those documents, about those searches.

Plaintiffs wanted to speak with our client with members of the NYPD about those searches, and quite honestly, Your Honor, we didn't think that that was proper or necessary. We're the attorneys; there's no need for plaintiffs' counsel to speak directly to our clients about the searches that are occurring. We have told them about the searches, that we had spoken with our contacts, and what our contacts at our clients have done to request the documents. We have, for instance, one of the - just as an

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example, one of the things that, you know, are outstanding are footage from aviation, from the helicopters that were flying over some of those (indiscernible). That is, you know, ready for production. I don't know if it's going to be today or tomorrow, but that is ready for production. There's another pretty big load of documents that is going to be ready for production hopefully by the end of this week.

So the documents are coming in, they're being produced. We (indiscernible) plaintiffs for giving us, you know, what they believe was missing. We acknowledged that not every document was there. I think considering the enormous amount of documents that were requested and the scope and breadth of discovery in these cases I think it would be virtually impossible to have produced every single document that they've requested, especially in light of defendants' responses and objections and requests for clarification on a number of the document requests and interrogatories. So I think the parties are certainly working, the defendants at least are working towards trying to get plaintiffs the documents that they have requested that are proportional, that are responsive, that are not objectionable, not otherwise privileged or - and we are currently doing so.

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2 In addition, as the Court knows and as
3 plaintiffs know, we are working on the electronic
4 discovery, part of it the email discovery which is also
5 going to contain a lot of information and documentation.
6 A lot of the documents that plaintiffs have listed in
7 their so-called deficiency letter, which they referred to
8 in their letter to the Court, a lot of those documents
9 were, in fact, produced to plaintiffs. So I think that
10 their, you know, their co-called deficiency letter is
11 inaccurate.

12 So there are a lot of moving parts here.
13 Defendants are, in fact, in the process of producing
14 things that may have not been produced, but I also think
15 that plaintiffs are asking for things or presenting to the
16 Court that documents weren't produced that were, in fact,
17 produced or documents that were, still need to be produced
18 even though they were objected to.

19 THE COURT: So what was the last sentence?

20 MS. WEISS: I'm sorry --

21 THE COURT: Ms. Weiss, what was the very last
22 thing you said?

23 MS. WEISS: Oh, that there were a number of
24 documents, document requests that might have been objected
25 to that plaintiffs are still categorizing as unproduced

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documents.

THE COURT: Okay, so we have two issues. One is when you're going to produce the items that you admit needed to be produced, and the other is a process issue of how you're going to have discussions. I don't think we're at a stage where I can start ruling on what's been presented to me on particular categories and whether you're done what you needed to do to search for those categories. So it sounds like you now think you've done everything they've told you, although they may not believe that, in terms of searching for them, and then the last question is I guess reviewing them for production or getting them in a form to be produced. Is that right, Ms. Weiss?

MS. WEISS: Well, some of the documents are still being searched for. It's not - the searches are in progress. I think on some of the documents we're not ready to say, no, they absolutely do not exist or we haven't been able to locate them. A number of things we have located and we're reviewing. A number of things we're still waiting. You know, there's been, for example, where somewhere oh, yeah, you know, this is around, we have this, we've got to find it, we've got to locate it. You know, there's several different things going on. Some

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things, you know, no one could quite find. They might exist, they might exist, but we're not ready to say a definitive no, they don't exist sort of thing.

There's been issues with Argus footage which I think has been before the Court as well, whether or not it exists or there's an overbroadness issue with that, and I think we're still trying to work with plaintiffs' counsel on narrowing that down. I haven't been 100 percent involved in those discussions, but I know there are issues there.

So, yes, Your Honor, we are absolutely willing to produce and will produce what we have that is relevant and proportional and not overly burdensome, and that is a good deal of what plaintiffs have put in their letter and their letter to our office that has not already been produced and that we have not objected to.

Let me, if I may, let me rephrase that. We've objected to a number of things and stated that we're not producing them at all or we have narrowed down what in those requests that we will be producing, you know, objections are part of it and producing's part of it, as Your Honor had us do early on in this letter.

THE COURT: Mr. England, you wanted to add something?

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2 MS. WEISS: I'm sorry?

3 MR. ENGLAND: Yes, Your Honor.

4 THE COURT: Mr. England's going to speak.

5 MS. WEISS: Okay, sorry.

6 MR. ENGLAND: Yes. Yes, Your Honor, you know,
7 I respectfully disagree with Ms. Weiss's characterization
8 of the back and forth between the parties leading up to
9 this dispute. We put together the September 10 letter
10 that specifically identified more than 30 categories of
11 documents which we did not see in their production.

12 We then requested a meet and confer. Defendants
13 asked for more than I think ten days to put together a
14 response to that. We then met on September 20 on a
15 Monday. When pushed to provide responses about the 30
16 categories identified in the letter, defendants' counsel
17 continually deferred and said I don't know to the status
18 of the searches for those documents. We then asked for
19 more information; counsel said they'd get back to us. We
20 said without a date certain that, you know, we would see
21 that we were at an impasse because we need more
22 information about when defendants intended to produce
23 these documents, what the status of the searches were, and
24 just what each of these categories, if defendants are
25 claiming that they previously objected to these

1 categories, they need to state that.

2 But we did not get any of that information from
3 the defendants. They agreed to produce by the end of that
4 week a list of the categories where they admitted that
5 they had not produced or fully produced and where the
6 searches were ongoing. We never got that information by
7 the end of the week. And, you know, we then confirmed, in
8 the absence of getting that information, that we were at
9 an impasse, and that is why we're here.

10 And, frankly, we, you know, we have attempted to
11 get additional information from the defendants multiple
12 times about what the status is on their search for each of
13 these categories to no avail, and that is, you know, Your
14 Honor identified the process issue, that is a significant
15 issue that has perennially invaded our conferrals with the
16 defendants, and it's something that I think needs to be
17 addressed.

18 THE COURT: All right, so, Ms. Weiss, I believe
19 the plaintiffs are entitled to a definitive answer on
20 those 30 categories. Either you objected to them or you
21 are undertaking a process to search for them and with a
22 reasonable description of that process. I understand your
23 interest in avoiding a deposition of someone in the police
24 department, but it seems to me it would be a whole lot
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better to have someone available answering questions than to put the plaintiffs in a situation where they can't get answers about whether the search is being conducted adequately and then having a good case for having a deposition of that person.

So rather than go to that extreme length, it seems to me you should have such a person available on the phone call. I suppose at this point I'm not going to require you to make them speak, but they should be available for a real time consultation with you and with real answers to these things. I mean either that or you completely educate yourself so that you have the real time answers to these things.

MS. WEISS: Your Honor, that's --

THE COURT: I --

(interposing)

THE COURT: Go ahead.

MS. WEISS: That's no problem, Your Honor, but part of the problem in the past meet and confers is that plaintiffs have been very, very quick, we feel, jumping the gun to declare things an impasse rather than what I think is the purpose of a meet and confer is to try to reach an agreement. And this has happened before, and it's happened throughout the process. They make a

suggestion, which is more of a demand, and when the defendants, be it myself or one of my colleagues, don't agree, rather than have useful back and forth on how we can reach an agreement or a compromise, they're very quick to say so we're at an impasse, let's move on to the next topic.

So there's rarely, you know, in this case it was have someone on the phone from the police department or we're at an impasse. There has rarely been true back and forth chance for a compromise to talk about how we can do this, and this is why there's so many letters to Your Honor and so many court conferences. I don't know that the meet and confers that we've been having are in the true spirit of time to work things out between the parties.

THE COURT: I'm not ready to blame the plaintiffs on this score. So I think the better way to think about this problem, and I'm just dealing with the problem in front of me, is that they tried to have a meet and confer with you and you didn't have the information that they needed to have an intelligent meet and confer on the topic. Usually, when I have parties meet and confer, they know the facts, they're having an argument about, you know, whether some particular category is too burdensome

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2 or too expansive or something like that or relevant and so
3 forth, and that's in a situation where both sides know
4 what's at issue and what the facts are and have their
5 arguments about burden and proportionality and everything
6 else. But if they've given you a list of 30 document
7 areas and you come to the meeting and you say you don't
8 know where you are on some of them, I see the frustration
9 on the plaintiffs' part, and I think they're justified.

10 I think - and especially if there is someone who
11 does know who you could consult with on the spot or could
12 speak, you know, it's not that uncommon for attorneys to
13 have a client on the line who's in charge of production
14 and turn it over to that person to talk about it. I'm not
15 at the point of forcing you that, but I am at the point of
16 saying that person has either got to be in the room with
17 you or on another line with you or whatever it takes that
18 you can give them some real answers.

19 As to these 30 categories, have you gotten the
20 answers about whether you're objecting or whether they're
21 searchable and what the timing is and all those kinds of
22 things that are so critical for a meet and confer?

23 MS. WEISS: The objections are in all of the
24 responses to the requests that plaintiffs have made. I'm
25 more than happy to pull them out specifically to give to

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plaintiffs. And the timing I can certainly confer with my client, but as Your Honor pointed out, it might be easier to do on a phone call with a representative from my client with me in the room, you know, in the room with me so we can answer sort of quick questions on that stuff. And if plaintiff --

THE COURT: Yeah, I think --
(interposing)

THE COURT: You have to have that conference as soon as possible. I don't care if you, you know, and you have to have the answers to start off with. I don't think it's easier to put it in writing and you can do it in the next day or two, put it in writing as to all 30 categories. If you think it's easier to have this person on the phone, then have this person on the phone. But you have to go through each category and state what your position is and what the timing is and what the search, you know, what the delay - if you're not producing it, you know, in a very short time period, then you have to explain what the problem is and what kind of delay you're talking about.

I mean I'm not going to go back and figure out whose fault each of those categories was, but you did make a commitment to produce everything by the 31st. If it

1 turns out there was something obviously within a category
2 that you didn't do by that date, you know, that's the
3 City's fault, and you shouldn't act like it's some kind of
4 burden on you to now have to explain that to the other
5 side. Maybe there's some categories that you think
6 weren't clear in the request. I don't want to go through
7 that now. But the process has to be with someone who's
8 extremely knowledgeable about the collection process. So
9 that person has to be on the phone, either speaking or
10 immediately consulting with you.

12 MS. WEISS: Yes, Your Honor.

13 THE COURT: All right, Mr. England, anything
14 else we should do on this particular issue on this phone
15 call?

16 MR. ENGLAND: No, Your Honor, you know, I
17 believe once defendants identify what objections they have
18 to purport to have about any particular categories, we may
19 need to raise that, you know, if further conferrals aren't
20 fruitful. You know, we believe we identified whether they
21 had already objected to these categories, and part of the
22 reason why we had pushed for compliance with the 2015
23 amendments where they specifically note their objections
24 to each specific category of document is for this very
25 reason. So we know up front what, you know, what they

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aren't intending to produce or collect, and that's simply just difficult here. But thank you, Your Honor, and I guess just one other I guess request would be, you know, to the extent that defendants have confirmed that there are outstanding categories, a deadline from the Court by which they should be produced would be one thing that we would perhaps request.

THE COURT: Yeah, I mean I'm flying a little blind on that, Ms. Weiss. You told us I think the aviation documents could be ready this week, is that what you said?

MS. WEISS: Aviation footage, yes, Your Honor. There is a series of things which we do have here which need to be reviewed and go out. The aviation footage does not have to be reviewed, and it's with the vendor as we speak getting ready for a production. And there's some other things which - I can pull up my computer but it might, yeah, I don't think it's necessary to talk about it here at this conference, but I can get the list to plaintiffs' counsel after the conference so they know what's coming next.

THE COURT: Mr. England, I'm not sure I can do dates without knowing which category we're talking about and what the claims are as to each category. I mean I'm

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grateful that you, in a way, that you didn't go through each of the categories and try to put this all together because I think an immediate conference is a better way to deal with this problem. And if at that conference they're not giving you dates that make any sense to you in terms of production dates, then you should absolutely come back to me.

MR. ENGLAND: Thank you, Your Honor, I think that makes sense. We will see what happens at the forthcoming conference and we will revisit with you if necessary.

THE COURT: Okay. All right, that is issue 1. Okay, next the privilege log. Okay, Mr. Rickner, why don't you go ahead on that.

MR. RICKNER: Thank you, Your Honor. Rob Rickner. I think really the first point is privilege logs going forward. It took months, numerous emails, mentioning it at meet and confers to get the privilege log that we did get with the DOI documents. We don't have time to wait four or five months for a privilege log going forward. Moreover, I think the local rules are pretty explicit on this.

So the first thing we would ask is simply to order the defendants to provide a privilege log with each

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2 production. If they're withholding documents, we need to
3 be able to know the grounds for why they were withheld so
4 we can meet and confer immediately and try to move the
5 ball on that. So I think that's the first thing that
6 we're asking for.

7 The second is is that we have real concerns
8 about the completeness of the existing privilege log. And
9 here's why. There was a series of interviews by the DOI
10 where, you know, there were doing essentially a post
11 mortem on the NYPD's response to the protestors. And
12 during those interviews two separate high level NYPD
13 officers discussed an internal NYPD sort of high level
14 after action report, you know, a detailed exploration of
15 what happens, what needed to be done better or often I
16 think they say what they don't need to do better,
17 arresting under existing processes.

18 So that isn't just one document, right? An
19 investigation like that generates some paper, right, and
20 I'm gathering it's being withheld on deliberative process.
21 Of course, I don't know. I can only theorize based on
22 their past objections. But that doesn't appear on the
23 privilege log. And so that just happens to be a category
24 of documents that we've stumbled on through a review of
25 the existing production. They're obviously missing.

Another issue is the point about the Mayor's Office documents. Their contention is is that they've never looked for the Mayor's Office documents at all, and that's why there's nothing on the privilege log. Those were requested specifically in the document requests. So, you know, the fact that we are unable to tee up any issues we might have with privileges that they're asserting because they haven't even done the work of producing the documents is troubling.

So I think that there needs to be a repair of the existing privilege log and, you know, some real strong ground rules going forward if they're going to be withholding materials.

THE COURT: Okay, Ms. Weiss, why don't you address the last issue first which is the notion that you haven't done any search of the Mayor's Office apart from any issue of privilege, which in a way I suppose goes to the issue we just discussed with Mr. England.

MS. WEISS: Well, Your Honor - sorry.

THE COURT: But what is your response on that issue?

MS. WEISS: It's my understanding that the documents from the Office of the Mayor are all contained within the email productions which are currently being

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reviewed.

THE COURT: Okay, so you think there's no non-email Mayor's Office material?

MS. WEISS: This is what I have been advised. That's all contained --

THE COURT: By the Mayor's Office or somebody else?

MS. WEISS: Yes, yes, by the Mayor's Office.

THE COURT: Okay, well, if it is just emails, then I guess why don't you respond to the other two issues then, the past privilege logs and the completeness of the prior privilege logs and what the plan is going forward with respect to providing privilege logs.

MS. WEISS: With respect to the past privilege logs, so the privilege logs are generated through the database that we've been using to produce the documents. Absolutely there - because when the documents are coded, they're coded for responsiveness, for privilege, for redactions. So in the past there was absolutely a holdup with - when the documents were first being coded and produced, there was definitely a holdup with getting the privilege log printed out from those past documents, and it was on us, and we apologize.

In the future, as we produce documents through

1 this database, including the emails, because of the way
2 they're coded, we should be able to provide almost
3 immediate privilege logs. I believe there have been some
4 back and forth and concerns with redactions and the
5 redactions not being on the privilege log. The reason for
6 that is because the redactions themselves on the documents
7 state the reason for the redaction. And if something is
8 being redacted because it's personally identifiable
9 information, it will say that on the redaction itself. If
10 it's being redacted for a privilege, it will say that on
11 the redaction itself. So that might not always come up on
12 the privilege log. The privilege log will show if the
13 document is being completely withheld for a privilege.

14 I can inquire to see if documents with
15 redactions can be put on a log. Not really sure how the
16 database works in that way, but all the privileges are
17 there and all the information for a privilege log is
18 contained in the documents it might not be in the exact
19 format that counsel is used to. I'm not a hundred percent
20 sure. I can inquire further into that. I don't think we
21 have any of our e-discovery folks on this call today. We
22 don't know right now. But future privilege logs this
23 shouldn't be a problem producing them in a much more
24 timely manner.
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With respect to completeness, I'm not really sure what Mr. Rickner is referring to. The one document that he refers to, this after action report, there's been discussion about this. Something that was referred to and it was unauthorized document, not unauthorized, that's not really (indiscernible), it was something written up by someone in the police department. It was an unofficial document. It hasn't been put on a privilege log because it's my understanding and I don't know what's happened in the last three or four weeks about it, but the last that I had heard no one has seen that document. The police department knows what plaintiffs' counsel has been referring to when they talk about this document, but no one's seen it, so it can't be on a privilege log. Presumably it would be deliberative process privilege, but it can't be on a privilege log yet because we don't have the document to produce or withhold the document. So it's not that it's being left off of a privilege log, but we've got to have the document and review it so we can see if it's privileged before we withhold it and put it on a privilege log. So that's the explanation for that one document.

MR. RICKNER: If I may, Your Honor --

THE COURT: All right - sure, go ahead.

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2 MR. RICKNER: Rob Rickner for the plaintiffs.
3 Just two additional points. We're talking about a
4 conversation and an investigation between two chiefs at
5 the NYPD. This was not an unauthorized side project by
6 someone. This was a significant investigation.

7 And the second part on the Mayor's Office, I
8 guess I just want to note for the record that we will be
9 taking these people's deposition and asking them if they
10 have paper, right, non-electronic documents that are
11 responsive. And if they say yes, we're going to make way
12 for arguments.

13 THE COURT: Okay, that's noted. All right, on
14 the log issues, it sounds like - I'm not sure - strike
15 that. The privilege logs should be produced at the time
16 of the document production, and it sounds like the City
17 doesn't really have a problem with that. So I don't think
18 there's any problem my ordering that going forward. I
19 mean the only slight hiccup to that is if they have a load
20 of documents that are ready to go and they have to do some
21 more work to put a privilege log together, the City
22 certainly might be entitled to ask the plaintiffs for
23 leave to give them the documents so it's not held up while
24 they do the privilege log. But the principle should be
25 that they happen at the same time.

1 I'm not sure why this issue specifically
2 regarding redactions, you know, there certainly shouldn't
3 be redactions except for some, you know, privilege or for
4 some personal privacy thing. I can't see any other reason
5 why there'd be a redaction. There certainly shouldn't be
6 a redaction on a document because of relevance. But
7 presumably it sounds like from the City that's going to be
8 explained at the time the document is produced, and
9 certainly plaintiffs will see the redactions, so they'll
10 know if it wasn't explained.

11 So I think that takes care of it. Absolutely
12 produce the log at the time the documents are being
13 produced. That's when it's due under the rule and that's
14 when it should be produced unless the parties agree
15 otherwise. Anything else on this privilege log issue, Mr.
16 Rickner?

17 MR. RICKNER: Only that the log needs to
18 conform to the local rules with all of the information the
19 local rules require.

20 THE COURT: Yeah, it certainly should have all
21 the information. There may be some reason that it doesn't
22 have to be in beautiful columns because of the way the
23 computer generates it. I don't see why it can't be, but,
24 Ms. Jacobs, did you - I'm sorry - Ms. Weiss, did you think
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2 that that was, do you have any reason to believe all the
3 categories aren't going to be there?

4 MS. WEISS: All the categories will be there,
5 Your Honor.

6 THE COURT: Okay. Anything else, Mr. Rickner,
7 on this?

8 MR. RICKNER: Well, on privilege log, no. Just
9 the other two issues.

10 THE COURT: Okay, go ahead.

11 MR. RICKNER: Well, we did today receive
12 objections to the Sierra plaintiffs' first set of
13 supplemental document requests. We did not receive any
14 documents. In response to most of the requests, there was
15 an instruction that they were still searching and still
16 looking. This is, you know, a microcosm of the issues
17 that Mr. England addressed, but, you know, we're really
18 looking - those requests are much more targeted, and we're
19 looking for a hard date by which they'll actually produce
20 the materials so we can move our case forward. Something
21 in the neighborhood of 30 days.

22 THE COURT: All right, Ms. Weiss.

23 MS. WEISS: I just want to point out that,
24 although Mr. Rickner refers to this as a microcosm and
25 that there are more targeted requests, most of the

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2 objections were stated because these requests were
3 absolutely duplicative of many of the requests that they
4 were already made, that were already made. And many, many
5 documents responsive to these requests were already
6 produced in the 70 some odd thousand documents that were
7 already produced.

8 Regardless, more - documents are, more targeted
9 documents I suppose we could say are being searched for.
10 We had a conversation just this afternoon with a chief who
11 has some specific information. This is about specifically
12 the Mott Haven protest. So we hope to be getting some
13 more answers from this individual within the next day or
14 two, but within 30 days to provide further, more
15 substantive responses is absolutely reasonable and no
16 problem.

17 THE COURT: Well, I don't think they want
18 responses. I think they want the documents in 30 days.
19 What's the problem with that?

20 MS. WEISS: Well, that's, that is what I mean,
21 Your Honor, the documents to the extent that they exist.

22 THE COURT: Okay. All right --

23 MR. RICKNER: One other --

24 THE COURT: Go ahead.

25 MR. RICKNER: I'm sorry, Your Honor, Rob

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Rickner. One other small subpoint. They also provided interrogatory responses, but they aren't verified which, you know, is an evidentiary issue for us if we want to use those responses at trial. So we would ask that they be verified by somebody with knowledge.

THE COURT: Okay, this is new. I understand you didn't get them till recently. Do you have a response to that, Ms. Weiss?

MS. WEISS: Well, I do, but we will provide verified responses. Not a problem.

THE COURT: Okay. All right, so the documents are --

(interposing)

THE COURT: I'm sorry, Mr. Rickner, you wanted to say something?

MR. RICKNER: Just in the same 30-day period if it's okay.

THE COURT: Yeah. All right, so verified responses and the actual documents to be produced by November 19.

MR. RICKNER: Thank you, Your Honor. And only one --

THE COURT: Okay --

MR. RICKNER: -- small additional point about

1 the aviation footage. And I understand that they
2 represent that they're producing it, but I'm going to need
3 a little bit more clarity, and that's why I want to
4 address this with the Court. Aviation footage in the
5 regular course of business is deleted in 30 to 60 days, a
6 relatively short period of time. What I mean by that is
7 is that any aviation footage from let's say May or June of
8 last year is only still in existence because they
9 preserved it. Right? If they didn't preserve it, it's
10 gone in the regular course of business. Presumably, if
11 they preserved it, it's all in one place. Right? If
12 you're going to do a document or video preservation for
13 litigation, you're not going to leave it scattered across
14 a bunch of other hard drives.

16 And so my point is we want to know what was
17 preserved, and then we want to be ensured that everything
18 that was preserved with respect to aviation footage is
19 being produced, right, because that is going to be the
20 complete universe. And it may be that some things weren't
21 preserved, but that's a different set of issues.

22 MS. WEISS: Well, I think that Mr. Rickner
23 assumes a lot. He makes assumptions. I don't know where
24 those assumptions come from. I don't know how long
25 aviation footage is preserved for. I know the aviation

footage for the Mott Haven protest was preserved because it was clear that it was a mass arrest situation and that the footage could possibly be useful for any criminal prosecutions. So a decision was made to preserve it. I don't know where it was preserved, how it was preserved, if it was preserved on one hard drive in one location, if other aviation footage from any other protests were preserved --

THE COURT: Then, Ms. Weiss, if I can just stop you. I'm getting a sense of the frustration of the plaintiffs during your meet and confers. I feel like I'm getting my own experience of it. There's no point in talking about it if you don't know anything about it. I understand what Mr. Rickner said, and you said you don't know if it's true. That's enough; that's fine. I don't need to have the details of all the things you don't know.

So, you know, you're going to get this footage, Mr. Rickner. You'll know immediately if, (indiscernible) immediately or at some point, you'll have a sense of whether there's something missing, and then you'll make the appropriate inquiries, first with Ms. Weiss, and then if that doesn't work perhaps within a deposition, about whether things were preserved or not preserved, and you'll make an appropriate spoliation motion. But I don't think

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2 on this phone call we can get to the bottom of this
3 factually, which is what you really need.

4 So this would certainly be a subject of
5 discussion in a meet and confer. The City should
6 certainly be prepared to answer the question when the time
7 comes. You'll need to give them some warning about it.
8 But I don't think your letter teed it up for the
9 spoliation aspect of this. So I don't think this is the
10 time to do it.

11 MR. RICKNER: Understood, Your Honor. And can
12 we get a deadline for the time for which the City will
13 produce the aviation footage that it is producing?

14 THE COURT: Ms. Weiss.

15 MS. WEISS: It will be, it should be ready the
16 end of this week, but just in case there's a technical
17 issue, if we could have one week from today.

18 THE COURT: Okay, have it produced as soon as
19 you have it, but in any event no matter than October 26
20 unless the parties agree otherwise.

21 MS. WEISS: Thank you.

22 THE COURT: All right, Mr. Rickner, anything
23 else we need to do on this phone call?

24 MR. RICKNER: No, Your Honor.

25 THE COURT: Ms. Weiss, anything?

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MS. WEISS: No, Your Honor.

THE COURT: Okay, thank you, everyone, good
bye.

MS. WEISS: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In Re: New York Policing During Summer 2020 Demonstrations, docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Date: August 29, 2021